

**78A-12-204 Judicial performance survey.**

- (1) The judicial performance survey required by Section 78A-12-203 concerning a judge who is subject to a retention election shall be conducted on an ongoing basis during the judge's term in office by a third party under contract to the commission.
- (2) The judicial performance survey shall include as respondents a sample of each of the following groups as applicable:
  - (a) attorneys who have appeared before the judge as counsel;
  - (b) jurors who have served in a case before the judge; and
  - (c) court staff who have worked with the judge.
- (3) The commission may include an additional classification of respondents if the commission:
  - (a) considers a survey of that classification of respondents helpful to voters in determining whether to vote to retain a judge; and
  - (b) establishes the additional classification of respondents by rule.
- (4) All survey responses are anonymous, including comments included with a survey response.
- (5) If the commission provides any information to a judge or the Judicial Council, the information shall be provided in such a way as to protect the confidentiality of a survey respondent.
- (6) A survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appears in the judge's court is closed, exclusive of any appeal, except for court staff and attorneys, who may be surveyed at any time during the survey period.
- (7) Survey categories shall include questions concerning a judge's:
  - (a) legal ability, including the following:
    - (i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;
    - (ii) attentiveness to factual and legal issues before the court;
    - (iii) adherence to precedent and ability to clearly explain departures from precedent;
    - (iv) grasp of the practical impact on the parties of the judge's rulings, including the effect of delay and increased litigation expense;
    - (v) ability to write clear judicial opinions; and
    - (vi) ability to clearly explain the legal basis for judicial opinions;
  - (b) judicial temperament and integrity, including the following:
    - (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's court;
    - (ii) maintenance of decorum in the courtroom;
    - (iii) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the judicial system;
    - (iv) preparedness for oral argument;
    - (v) avoidance of impropriety or the appearance of impropriety;
    - (vi) display of fairness and impartiality toward all parties; and
    - (vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions; and
  - (c) administrative performance, including the following:
    - (i) management of workload;
    - (ii) sharing proportionally the workload within the court or district; and
    - (iii) issuance of opinions and orders without unnecessary delay.
- (8) If the commission determines that a certain survey question or category of questions is not appropriate for a respondent group, the commission may omit that question or category of questions from the survey provided to that respondent group.
- (9)

- (a) The survey shall allow respondents to indicate responses in a manner determined by the commission, which shall be:
  - (i) on a numerical scale from one to five, with one representing inadequate performance and five representing outstanding performance; or
  - (ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.
- (b) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the commission may allow respondents to provide written comments.
- (10) The commission shall compile and make available to each judge that judge's survey results with each of the judge's judicial performance evaluations.
- (11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

Amended by Chapter 80, 2011 General Session